

October 1, 2003

Ms. Becky Baker  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: EGRPRA

Dear Ms. Baker:

Navy Federal Credit Union provides the following comments in response to the National Credit Union Administration's proposal to comply with Regulatory Publication and Review provisions of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).

Historically, a rich tradition of "people helping people" in a cooperative spirit helped define the credit union movement. This unique organizational philosophy effectively served the financial needs of many people, especially those of modest means, through the years. Congress reaffirmed the contemporary role of credit unions with the enactment of the Credit Union Membership Access Act (CUMAA). Although the Federal Credit Union Act may need some additional adjustments and fine-tuning, fundamental changes in the public policy affecting credit unions could eliminate their defining characteristics expressed by Congress in Section 2 of CUMAA and identified in the 2001 Treasury Report, *Comparing Credit Unions With Other Depository Institutions*. Regulators must not lose sight of the traditional role of credit unions and the characteristics and values that underpin their strength as they fulfill their responsibilities under EGRPRA.

Although the distinctive characteristics of credit unions must be recognized and maintained, regulators must coordinate regulatory reviews that affect all financial institutions. We commend NCUA for its joint efforts with other financial institution regulators. However, other federal financial services regulators occasionally issue proposals or notices before similar notices are issued by NCUA. As such, credit unions may be asked to comment on public policy issues where opinions are already far along in the development process. This results in credit unions being less than effective partners in the regulatory notice and comment process. Wherever possible, we encourage NCUA to closely coordinate its regulatory reviews with other financial institution regulators.

We support the use of plain English in the development of federal regulations. However, the use of a question and answer regulatory format does not facilitate plain English – it increases the potential for misunderstandings and confusion. Although the Q&As may be appropriate for

appendices or supplemental guidance, we urge NCUA to discontinue use of the Q&A format for the Code of Federal Regulations.

Navy Federal has no objections to the proposed categories of regulations for NCUA's EGRPRA review process. Our comments on specific issues follow:

Field of Membership (FOM)/Chartering (12 CFR 701.1)

We believe NCUA has generally acted with prudence in exercising its authority to promulgate FOM regulations since the passage of CUMAA. Although some fine-tuning may be appropriate, we encourage the Agency to continue to chart a prudent course until the full effects of the latest field of membership changes are thoroughly evaluated. Credit unions seeking ever-larger fields of membership while product and service penetration rates remain low contribute to perceptions that credit unions may not be fulfilling their public purpose as envisioned by our nation's policymakers. Section 109(f)(2)(C) of FCUA affirms Congress' belief that multiple common bond credit unions are expected to have the capability to serve their proposed membership. Although not explicitly stated, we believe other types of credit unions are expected to serve all of their membership as well. We encourage NCUA to carefully consider the effects of requests for larger fields of membership from credit unions with low penetration rates in their existing field of membership.

Fees Paid by Federal Credit Unions (12 CFR 701.6)

Navy Federal believes that it is vitally important for NCUA to determine the correct approach to the Overhead Transfer Rate since NCUA's remaining expenses are assessed on federal credit unions through operating fees. We urge NCUA to collect sufficient operational data on examiners, staff and other costs to accurately set the Overhead Transfer Rate level. We encourage NCUA to make every effort to increase operational efficiency and eliminate waste and duplicative efforts wherever possible.

Conversion of Insured Credit Unions to Mutual Savings Banks (12 CFR 708a)

Navy Federal has two concerns regarding this regulation. First, we ask that NCUA carefully examine the requirements of 12 CFR 708a to ensure that credit unions wishing to convert to mutual savings banks practice the highest standards of disclosure to their membership. The trust between credit unions and their membership cannot be understated and every effort should be made to ensure that credit union members are fully apprised of all circumstances relating to their credit union.

Our second concern relates to statute regarding the number of members necessary to vote to convert to a mutual savings bank. Section 1785b (2)(B) of FCUA states that approval of the conversion "shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal." Theoretically, therefore, a minute percentage of members could decide the fate of that credit union. We encourage NCUA to advocate for a position that

would require a significant percentage of a credit union's membership cast a vote to convert. Only when that percentage threshold was reached would a majority vote be considered valid.

Loans to Members and Lines of Credit to Members (12 CFR 701.21)

We believe that NCUA should be granted more flexibility to adjust the usury rate ceiling. Under Section 1757 of the Federal Credit Union Act, the maximum rate that federal credit unions may charge on loans is 15% unless NCUA, based on certain economic conditions, believes an increase is justified. Under those circumstances, the Board must consult with "the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies." We believe NCUA is the most familiar with the economic conditions of credit unions and should seek more latitude so that they may continue to ensure the health of the credit union movement.

Member Business Loans (12 CFR 723)

We believe that Section 107a of the Federal Credit Union Act imposes an unduly burdensome statutory requirement on credit unions seeking to serve an entrepreneurial segment of their membership that has not been adequately served in the past. Navy Federal asks that NCUA seek to increase the statutory threshold regarding exceptions to the general member business loan rule from \$50,000 to \$100,000. We believe raising the exception threshold will allow credit unions to serve members not currently served and do so with little additional risk.

Fixed Assets (12 CFR 701.36)

Navy Federal encourages NCUA to attach greater significance to market conditions involving the acquisition and retention of property. Current regulation attaches significant time limitations to the purchase of property, including a requirement that a credit union must achieve partial utilization of the facility within a three-year period or be required to dispose of the property. We believe that NCUA can establish more appropriate limitations that will allow credit unions greater investment flexibility and allow them to better manage risk. For example, NCUA could remove time limitations altogether and condition the purchase of property on an ongoing relationship with the credit union's sponsor or other closely affiliated groups willing to provide long-term leases.

Credit Union Service Organizations (12 CFR 712)

While we agree that current regulation regarding permissible activities for credit union service organizations is more flexible than previous versions, it is still unnecessarily restrictive. NCUA provides a list of permissible activities (12 CFR 712.5) that is intended to establish pre-approved categories of activities. Although the list of categories is broad, we are concerned that it might not adequately cover future activities. We believe it is more appropriate to place such a list in an appendix to the rule as "examples of permissible activities."

We also ask that NCUA reexamine the process by which a CUSO would gain approval for engaging in new activities. Currently, a credit union must seek an advisory opinion from

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NCUA's Office of General Counsel before requesting a regulatory change to add a new activity (12 CFR 712.3). We believe a credit union should not have to engage in a "process" to gain confirmation from NCUA's Office of General Counsel that an activity is permissible. Instead, NCUA should include criteria that enable credit unions to independently determine whether activities are permissible.

Security Programs (12 CFR 748.1)

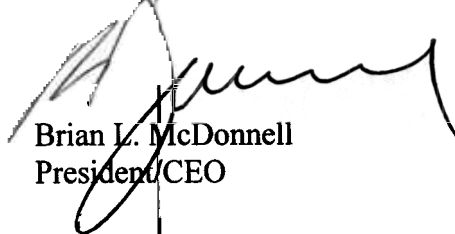
In the wake of Hurricane Isabel, Navy Federal asks NCUA to reexamine 12 CFR 748.1(b) regarding the filing of catastrophic act reports. Specifically, we ask that NCUA reexamine language that appears to require a credit union to notify NCUA's Regional Director of damage, no matter how minor, that the credit union may have sustained as a result of a natural disaster.

15 USC Sec. 6801(b) directs NCUA to establish appropriate standards for federally insured credit unions relating to the physical safeguarding of member records. We ask that NCUA more narrowly define "catastrophic act" in 12 CFR 748.1(b) to limit the requirements for notification to those instances where substantial damage has been sustained that threatens the loss of, or results in unauthorized access to member information. We suggest the following:

Section 748.1(b). Catastrophic act report. Each federally insured credit union will notify the regional director within 5 business days of any catastrophic act that occurs at its office(s). A catastrophic act is any natural disaster such as a flood, tornado, earthquake, etc., or major fire or other disaster resulting in ~~some~~ *substantial* physical destruction or damage to the credit union *that threatens the loss of, or results in unauthorized access to member information.*

Navy Federal Credit Union appreciates the opportunity to respond to NCUA's request for comments regarding the periodic review of its regulations.

Sincerely,



Brian L. McDonnell  
President/CEO

BLM/pjm